1949. **File No.** O. Transfer of Detained Legal Deptt. Persons/49

A **BRANCH**

Subject:— Opinions under the Transfer of Detained Persons Ordinance 1949

(E)

File No. O. Transfer of Detained Persons/49

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C O N T E N T S

Legal Department File No.0.Transfer of Detained Persons /49

Nr.No.	R.I./O.No.	Subject.	Pages.
		Transfer of Detained Persons Ordinance,1949.	
1.	R.I.No.14767/9-9-49 O.No.18577/8-11-49	Whether a person detained on the ground that he is acting in a manner prejudicial to the Public safety or the tranquillity of the Province or any part there of can be considered to be a person to whom the ordinance applies.	1- 4

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Os.

Office of the R.L.A.

Section 2 of the Transfer of Detained Persons Ordinance, 1949, provides that where any person is subjected to preventive detention for reasons connected with the maintenance of public order in any Province under a law for the time being in force in that province, the Government of any other province, provide by that province may with the consent of the Govt of any order for the removal of such person to any place of detention for the removal of such person to any place of detention in that other province. The preventive detention of persons in the Province of Bombay is primarily regulated by the Bombay Public Security Measures Act, 1947. Under Section 2(1) of the Act, a person can be detained if he was acting or is acting or is likely to act in a manner prejudical to public safety, the maintenance of public order of the tranquillity of the Province or any part thereof. The question raised for the R.L.A's consideration is whether a person detained on the ground that he is acting in a manner prejudicial to the public safety or the tranquillity of the Province or any part thereof can be considered to be a person to whom the Ordinance applies.

2. The Bombay Public Security Measures Act is referable to entry "Preventive detention for reasons connected with the maintenance of public order" (entry No.1 in Provincial Legislative List). The expression "public order" in that entry, following the now well established principles of construction, must be given a very liberal meaning and is wide enough to include not only "public safety". but also "the maintenance of tranquillity". By "public safety" we generally mean the security of the community of the exemption of the community from danger or harm. In that sense "public safety" and in any case" public tranquillity" would be included in the expression public order". There is a recent decision of the

Lahore High Court in Pakistan where it was held that the expression "public order" in List I must in its context be taken in its comprehensive sense so as to include "public safety". (Muhammad Ali v.Crown, A.I.R. 49 Lahore 9.207 at p. 209). In that view, although the three expressions "public Safety", "tranquillity" and "public order" may have been separately mentioned in sub-section (1) of section 2, the first two will be treated as not distinct from "public order" but as falling within "public order". In other words, a person who has been detained only on the ground that he is acting in a manner prejudicial to public safety or to the maintenance of public tranquillity can be said to be detained for reasons connected with maintenance of public order and would, therefore, be subject to the ordinance.

Sd/ P.N.Lad.

Remembrancer of Legal Affairs.

U.H. to H.D.No.12577, dated the 8th November 1949.

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